

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Leslie Lynn DeWitt v Brian Anthony Simpson**

Docket No. **267879**

L.C. No. **03-900537 DS**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

The claim of appeal filed January 24, 2006, is DISMISSED for lack of jurisdiction because it was not filed within 21 days of the November 16, 2005, clerk's entry of the order denying the motion for new trial as required by MCR 7.204(A)(1)(b). The only final order in this case was the October 11, 2005, order denying a change in physical custody. See MCR 7.202(6)(a)(iii). The appellant tolled the time period for appealing by filing the motion for new trial. That motion was denied by the November 16, 2005, entry of the order denying the motion. However, instead of filing a claim of appeal within 21 days of November 16, 2005, as required by MCR 7.204(A)(1)(b), appellant returned to the circuit court to challenge the legality of the entry of the November order. Since that challenge was not filed within the initial 21-day appeal period of the October 11, 2005, final order, it could not extend the appeal period past December 7, 2005. This dismissal is without prejudice to filing an application for leave to appeal under MCR 7.205.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 08 2006
Date

Sandra Schultz Mengel
Chief Clerk